

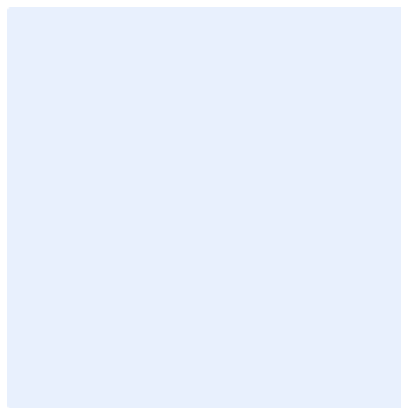
**CPCCBC4003A SELECT AND PREPARE A
CONSTRUCTION CONTRACT,
CPCCBC4016A ADMINISTER A CONSTRUCTION
CONTRACT &
CPCCBC4032A APPLY CONTRACT LAW TO SALES
PROCESSES**

THEORY EXAM INSTRUCTIONS

- This exam will occur under standard assessment conditions.
 - An oral examination may be allowed under certain circumstances. Answers will be documented and FT003 (Oral examination declaration form) must be completed.
- Participants must provide enough detail in their responses to demonstrate their knowledge and skills.
- Please fill in the details below, providing your name, signature and date of assessment.
 - Your signature acknowledges that this is your own work.
- If a participant initially answers a question incorrectly but modifies their response, they must follow the instructions below:
 - If a participant changes their response in writing, they must put their initials next to the written change.
 - If a participant changes their response verbally, this must be noted on the exam paper by the assessor.

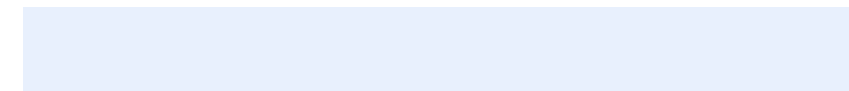
Participant name Shanae Andrews

Participant signature



Assessor name Brett

Assessor signature



Date 14/09/2019

Number of questions	Number of questions answered correctly	Satisfactory?	
		Yes	No
51		☐	☐

Q1. Order the following elements of an agreement from 1 to 4.

Answer

Element Number	Element
2	Acceptance
4	Consideration
3	Intention of legal consequences
1	Offer

☐

Q2. When would an offer be considered to have lapsed?

Answer

An offer is considered to have lapsed if the time for the acceptance has expired, the offer is withdrawn before it is accepted or after a reasonable time in the circumstances (depending on the value of the contract).

☐

Q3. What happens to the offer if new terms are suggested?

Answer

If new terms are suggested a counter offer needs to be written, which can either be accepted or rejected by the other party.

☐

Q4. What does it mean when a contract is supported by 'valuable consideration'?

Answer

This means both parties understand that one of them has to promise the other one to do something in return to the other parties' promise. In case of buildings contracts, it is usually the consideration of money.

☐

Q5. Identify two (2) parties who may be deemed to not have the capacity to enter into a contract.

Answer A senile person or somebody who is suffering from a mental disability are two examples. ☐

Q6. Outline your understanding of 'consent' as it applies to contractual agreements. Identify when 'apparent consent' might not actually exist.

Answer A contract can't be legally binding unless consent is given. Consent occurs when two parts mutually agree to form a contract with each other. It can't be given under pressure.
E.g. Person A claims money from Person B. Person A was under the impression that Person B does not have much money. Based on this, Person A made a settlement agreement for a nominal amount. Later Person A realised that Person B was in fact wealthy, so Person A sought to set the agreement aside. This is not possible, because a unilateral mistake of fact does not affect the binding character of an agreement.

Apparent consent may be negated because of mistake, fraud, innocent misrepresentation, duress or undue influence, all of which are defences to the enforcement of the contract. ☐

Q7. Identify the building industry regulator in your state and describe its role, particularly with regards to providing advice about contracts.

Answer NSW Fair Trading, which is responsible for a range of matters associated with the building regulation system, including the licensing of building practitioners and the administration of legislation relating to the plumbing codes and electrical safety.
On its homepage it provides step-by-step information how to setup a contract and which essentials need to be given. ☐

Q8. Under what laws are domestic building contracts regulated?

Answer The Home Building Act 1989 is the law that regulates the residential building industry and certain specialist work in New South Wales.
Further regulations can be found in the Home Building Regulation 2014. ☐

Q9. Domestic building contracts must be put in writing once the work exceeds what value?

Answer If the work exceeds more than \$5,000 in NSW, a contract needs to be written prior to starting the actual work.

☐

Q10. A commercial building contract must be put in writing before the building work is started if the reasonable cost of the work is more than what amount? Identify the relevant law that imposes this requirement.

Answer If the work is valued over \$100,000 a commercial building contract is required in writing.

☐

Q11. Contractors must give the owner a signed copy of the entire contract (including any plans and specifications) within how many days after entering the contract?

Answer Within 5 days of signing the contractor must give the owner a signed copy.

☐

Q12. What are the benefits of having a written contract in place between parties?

Answer Putting a contract in writing helps prevent later misunderstandings by forcing the parties to articulate their intentions and desires. A clearly drafted contract provides a written record of the terms agreed to and is more reliable evidence of the parties' intentions than the memories of what was said.

☐

Q13. Match the common building contract clauses and definitions below by writing the appropriate letter next to each number in the centre column.

Answer	Clauses	Answers	Definition	
1	Acceptances	1 - F	A Provide specific reasons that allow the contract period to be adjusted	
2	Cost adjustments	2 - E	B A provision for which remedies can be sought if breached	
3	Extensions of time	3 - A	C Specifically outlines the tasks to be completed as part of the construction work	
4	Payments	4 - D	D Outlines the requirements for deposits	
5	Scope of work	5 - C	E Address the risk of rise/fall of expenses	
6	Term	6 - B	F Require that the contract be accepted or rejected by a certain date, otherwise the contract will not be binding	

Q14. Which of the following are preliminary contracts that a builder could ask a client to sign prior to signing the main contract? Tick all that apply.

Answer	Choice	Possible Answers	
	☒	Contract estimate	
	☒	Contract request	
	☒	Preliminary agreement	

Q15. True or False (Tick your response): Clauses within pre-contract agreements may carry over into the contract, so it is important to discuss these with the client and come to an agreement.

Answer	☒	True	
	☐	False	

Q16. Identify and explain the purpose of four (4) standardised building construction contracts – two (2) residential and two (2) commercial.

Answer

Contract name	Description
Basic works contract	This contract can be used as either a Level 1 or 2 contract. This contract is a lump sum contract to be used for work performed on a detached dwelling, including a single duplex, or the renovation, alteration, extension or repair of a home, or removal or re-siting work for detached dwelling where the contract price is up to \$80,000 (GST inclusive)
New Home Construction Contract	For the construction of an entire home
Commercial Building Contract	A lump sum contract to be used for the construction only of commercial building work with or without a Principal's agent
Commercial Cost Plus contract	A cost plus contract for use on commercial building projects, where a lump sum price cannot be established, however a fair and reasonable estimate is given



Q17. Identify an appropriate standardised contract that would be suitable for a commercial works job up to \$100,000.

Answer

Commercial Minor Works Contract



Q18. Identify one (1) standardised residential building contract and explain the maximum value of the work it may be used for.

Answer

In NSW one of these contracts would be the Home building contract for work between \$5,000 and \$20,000
Suitable for trade work, maintenance and repair work as well as smaller alterations or improvements likely to cost less than \$20,000.



Q19. Describe the requirements for each of the topics listed below, with regards to residential contracts priced at \$20,000.

In Queensland, these are outlined in the QBCC Consumer Building Guide, which the consumer must sign before work is undertaken.

Answer

Topics	Definition
Builder's Licence	A licence is required for: -Residential building work valued at more than \$5,000 (inc GST) in labour and materials -All specialist work regardless of its cost. Specialist work includes electrical wiring, plumbing, drainage and air conditioning and refrigeration work (except plug-in appliances).
Contract price	Price must be stated on the first page of the contract schedule, along with a warning about any provisions that may cause the price to change. If the contract price includes any allowances, these allowances must be stated in the contract schedule. Small Build \$5,000 - \$20,000 Large Build > \$20,000 (NSW)
Building approvals and inspections	In Queensland, building inspections and approvals are the responsibility of a building certifier. Mandatory building inspections may be required at certain stages of constructions
Practical completion and handover	In Queensland, you are not required to pay the final contract payment until all the contracted work is completed in accordance with the contract, all legal requirements, and either without any defects or omissions, or with only minor defects that will not unreasonably affect occupation. If you believe there are any minor defects, the contractor must give you a defect document, compiled by you and the contractor during a handover inspection
Implied warranties	Building contracts typically contain a defect liability period in respect of building works that is usually between 12 to 24 months from practical completion of the building works. In NSW, a contractual defects liability period can't remove or limit rights to a statutory warranty



Q20. Which of the following documents can be referred to as collectively making up a contract? Tick all that apply.

Answer	Choice	Possible Answers	
	☒	Engineer specifications	
	☒	Plans, drawings and specifications	
	☒	Prime Cost Items Schedule	
	☒	Processes for applying for extensions of time	
	☐	Product catalogues	
	☒	Project timelines and schedules	
	☒	Provisional Sums Schedule	
	☒	Rise and fall calculations	
	☒	Site conditions report	
	☒	Soil and sedimentation report	

Q21. What is the difference between the Prime Cost Item Schedule and the Provisional Sum Schedule in a contract? Provide an example of each type to help explain your response.

Answer	
Most simply, prime cost applies to items themselves, provisional sums refers to complete works. If you do have prime cost items or provisional sums in your contract, the Domestic Building Contracts Act 1995 states that they must be set out in a separate document that includes: A comprehensive description of the item. An example for a prime cost is, if a client selects a more expensive door than allowed by the prime cost item, say a \$500 door compared with a \$440 prime cost amount, a variation will be required to cover the additional \$60. If the prime cost item varies, so will the final contract sum. An example for a provisional sum is where a building site may seem sandy and clean with minimal siteworks required. However, there may be large limestone rocks or tree trunks concealed below the surface which only emerge once siteworks commence, causing a considerable cost overrun.	

Q22. Cost adjustment provisions under a contract address risk by providing mechanisms for adjusting contract payment to reflect changes in costs. What can cost adjustment apply to?

Answer ☐ Cost adjustments only apply to long term costs (and some specific costs) such as labour and materials, currency exchange rates for overseas-purchased goods, duties, taxes, shipping.

Q23. True or False (Tick your response): Variations can be requested by both the client and the builder.

Answer ☐

☒	True
☐	False

Q24. How should you deal with a client variation request that consequently requires a time extension? How are time extensions addressed within the contract?

Answer ☐ If a client asks for a time extension the contract requires

- A variation in writing
- You to issue an 'extension of time' form – essentially asking the client to grant you an extension of the contract period to allow for delays caused by the variations
- The specific reasons for an extension of time are set out in the general conditions of the building contract and include reasons such as: inclement weather and delays caused by the owner, such as changes in the scope of works.

Q25. Name the Fair Trade legislation that applies in your state and identify which persons/bodies it applies to.

Answer NSW Fair Trading administers the NSW *Fair Trading Act 1987* and applies to

- Contractors
- Consumers
- Homeowners.

☐

Q26. Under the National Consumer Credit Code, before entering into a credit contract, what must the credit provider do?

Answer At the time of entering into the contract, the credit provider must provide a contract to the consumer. During the term of the contract, the credit provider is required to provide the consumer with periodical statements of account.

☐

Q27. What does the 'cooling off' period refer to when undertaking domestic building work with a total contract price of \$20,000 or more?

Answer As per NSW Fair Trading a contract for large jobs requires a clear statement setting out the cooling-off period of five clear business days after being given a copy of the contract where it is valued over \$20,000.
A "cooling off" period is the time frame, in which you may enable to cancel your contract if you are not satisfied with it, and you act quickly.

☐

Q28. What are the maximum deposits recommended for a residential building project?

Answer Under NSW home building law, the maximum deposit you can be asked to pay is 10 percent. ☐

Q29. Throughout the building schedule, progress payments are made when each new stage is ready to commence.

Identify the recommended stages and percentages for these progress payments on a typical new residential housing building project.

Answer Deposit – 5%
Base Stage – 15%
Frame Stage – 20%
Enclosed Stage – 25%
Fixing Stage – 20%
Practical completion - 15% ☐

Q30. You have been engaged by a client to construct their residential dwelling for \$550,000. Your client is pressuring you to accept a \$70,000 deposit to get priority on their construction. Should you accept the deposit? Explain your response.

Answer The deposit should not be accepted, as this amount is higher as the recommended percentages for the deposit before starting the actual works. ☐

Q31. Explain the following types of contractual breach and identify the consequences for the contractual arrangement due to each type of breach.

Answer	Breach	Explanation	☐
	Breach of condition under contract	If a condition is breached, the aggrieved party can elect to discharge the contract and sue for damages.	
	Breach of warranty under contract	If a warranty is breached, the aggrieved party cannot elect to terminate or discharge the contract – they may only seek damages.	

Q32. What does repudiation of a contract mean?

Answer	Repudiation occurs when a party to a contract is unwilling to perform their contractual obligations – through acknowledgement or their actions are totally inconsistent with their obligations under the contract. Repudiation does not automatically bring a contract to an end. The injured party can elect to either continue with the contract or accept the repudiation and move to terminate the contract.	☐
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Q33. True or False (Tick your response): In the event of repudiation, the injured party has two options:

- Continue with the contract
- Accept the repudiation and move to terminate the contract

Answer	☒	True	☐
	☐	False	

Q34. Why should you exercise caution, even if you are sure that the other party has repudiated the contract?

Answer Because if the situation is not deemed to be a repudiation, by acting the terminate the contract the 'injured' party may themselves be repudiating the contract and could be liable to pay damages. ☐

Q35. What does 'abandonment of contract' mean?

Answer The abandonment of contract definition is when both parties to a binding contract have acted in a way that makes the original contract invalid. The definition of abandonment itself is the act of surrendering your claim to, or an interest in, a specific asset. ☐

Q36. A contract can be terminated for 'cause' or for 'convenience'. Explain these two terms.

Answer A termination for convenience clause is a clause in a construction contract that allows one or both parties to terminate the agreement without a specific reason for doing so (such as a default or breach of the contract). ☐

Termination for cause refers to the expiration of a contract when one side failed to act up to the terms of the contract, and the other side is ending the relationship as a result. Termination for cause can result from work not being done or being done incorrectly.

Q37. Yes or No (Tick your response): Referring to Section 25 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), would a contract be

unfair if it contains a term that permits the builder, but not the client, to terminate the contract?

Answer

☒	Yes
☐	No

☐

Q38. If time is not of the essence for contract completion and one party fails to perform on time, the other party may terminate the contract after serving notice – specifying a time for performance on the first party. What are the requirements of a valid notice to complete?

Answer

What must occur to perform the contract:

- A reasonable time in which the contract must be completed
- A statement of the consequences of not performing in accordance with the notice

☐

Q39. True or False (Tick your response): Where the notice given (as per Q38.) is deemed invalid, the innocent party must either serve another notice or prove repudiation by the defaulting party, in order to terminate the contract.

Answer

☒	True
☐	False

☐

Q40. When is the client owner required to pay the final contract payment? How might this be affected by defects and omissions?

Answer ☐ The client is not required to pay the final contract payment until all of the contracted work has been completed in accordance with the contract, all legal requirements, and either without any defect or omissions, or with only minor defects or minor omissions that will not unreasonably affect occupation. If the client believes there are any minors defects or minor omissions, the contractor must give them a defects document (listing agreed and non-agreed matters). This document should be compiled by the client and the contractor during handover inspection.

Q41. Explain the concept 'conditions for completion at the cost of the contractor'.

Answer ☐ The Contractor must make good defects or omissions in the work under this Contract which become apparent within 6 months of the Date of Practical Completion.
If there are any such defects or omissions, the Owner must give the Contractor written notice to make good such defects or omissions within the 6 month period and must give the Contractor reasonable access to the Site for that purpose.
Subject to reasonable access being provided, the Contractor must within 28 calendar days of the notice being given rectify any defects notified to the Contractor during usual business hours.

Q42. Describe what must be stated in a 'warranty against defects' about the person who gives the warranty [as per Section 90 of the *Competition and Consumer Regulations 2010* (Cth)].

Answer ☐ The person's name and contact details (i.e. business address, telephone number and email address).

Q43. Name one (1) person you should consult if you are considering ousting a contractor from a building site.

Answer

Lawyer, Legal advisor

☐

Q44. What document should you refer to if you are considering ousting a contractor from a building site?

Answer

You should apply the dismissal procedure outlined in the contract.

☐

Q45. How should you handle a customer complaint?

Answer

- Deal with the complaint immediately
- Stay calm
- Identify the problem
- Decide what can be done
- Arrange a second opinion to confirm your view
- Keep records
- Fix the problem

☐

Q46. How do you reduce the risk of dispute?

Answer

- Record all complaints
- Act promptly
- Do what you say you're going to do
- Do not make unrealistic promises

☐

Q47. What is the process for dispute resolution?

Answer

When negotiations between you and your client or trade contractor break down, and rectification work is not completed, there are options and procedures for resolving your dispute. You should always refer to your contract first which outlines all contractual details in order to:

- Determining responsibility for defects
- Directing the contractor (where appropriate) to rectify defects or complete the works

☐

Q48. During your build the client has emailed you at 7:00pm to say they have been to the premises and noticed the installed bath in the bathroom is the wrong style.

You check the contract and the white goods and chattels list selected by the client. You cross check this with the specifications and your materials order and the receivable order sheets. You establish that the bath, as per these details, is correct and there has been no mistake on your part.

Draft a detailed response email to your client alerting them to the pertinent parts of the contract and specification, cross-referencing the details in regard to this item and its installation.

Answer

Dear xxx,

We received your email regarding the installed bath in the bathroom being the incorrect style.

After reviewing the contract and all other specifications, we can't confirm a wrong installation and couldn't find any discrepancies between the bath detailed in the white goods and chattels and the bath currently installed.

Please feel free to give me a call to discuss this further.

Regards,

Shanae Andrews



Q49. Where would you find any possible penalties associated with a build?

Answer In the specification and the contract under liquidated damage clauses.



**Q50. Explain the process for obtaining the final inspection certificate.
Explain how such documentation is to be stored/lodged.**

Answer Brisbane City Council must hold records of building approvals and certification information. The legislation also requires that an accredited building certifier must lodge the following documents with Council:

- Engagement notice and application details
- Decision notice, approved building plans and any other documentation that contributed to the plan approval
- Completion details such as certificates (including certificate of classification and inspection certificates) and any other documents relating to the certification and acceptance of the completed building work

The Planning Act 2016 and the Building Act 1975 require a private certifier to lodge building work documentation with Council.



Q51. Select and prepare an appropriate standardised contract for the client in the scenario below.

Mr. and Mrs. Cousins intend to engage your company Resilient Homes Pty Ltd (License 141526) in order to build a new low-rise residential dwelling as their future retirement property. Mid-term of this build the clients intend putting their current home on the real estate market for sale.

Additional details:

- The land has been secured and paid for by the Clients.
- Proposed contract amount is \$580,000.00 plus \$85,000 for a kidney shaped 9m x 6m in-ground swimming pool, landscaping, gardens and lawns.
- Mr. and Mrs. Cousins have finance approval from the Commonwealth Bank for \$390,000.00 and the balance in cash. You have received written assurance from the Clients finance company and bank that their finances for the build are fully secured.
- Mr. and Mrs. Cousins want to pay you \$75,000.00 upon signing of the contract to get their build at the top of your priority list.
- The residential dwelling will be a low set single skin masonry structure with hip and valley roof using glazed clay tiles, contrast metal fascia and gutters and colour/rendered finish on a 1000m² level block upon which there are three large standing hardwood trees which will need to be fully removed.
- The Clients want the largest tree wood chipped and the chipped bark retained on site for the future gardens and landscaping.
- Mr. and Mrs. Cousins operate an aluminium window supply company and have advised they will supply all the windows and shower glass for the build.
- The dwelling has four bedrooms with built-ins. The master bedroom has ensuite with toilet, spa bath and double shower and walk-in robe and dressing area. There is an office, gourmet kitchen with stone bench tops and butler's pantry, media room, separate open plan dining adjacent to the kitchen plus slate tiled outdoor entertaining area adjacent to the pool, two living areas (formal and informal), two bedrooms share a bathroom with bath, shower, double vanity and toilet and the guest bedroom is ensuited with shower only, toilet and single vanity, there is a powder room (toilet and vanity only), three car garage (one double and one single) and a store/workshop room at the rear of the double bay garage. A slab is to be put down in the back corner of the allotment for a 5m x 3m garden shed.
- The council approved building plans have been provided by Mr. and Mrs. Cousins these do not include the garden shed slab.
- The construction period excluding inclement weather and possible delays is 23 weeks
- Provisional sums are required for the wet areas, alfresco area and living area tiling. (Only the bedrooms are carpeted).
- Prime costs are required for the solar hot water system and ducted air conditioning
- Provide fictitious details for all other sections of the contract.
- 18 solar panels are to be installed on the roof

Answer

